

STRENGTHENING OF SHARIA PRINCIPLES AMONG RELIGIOUS COURT JUDGES IN SURAKARTA IN THE SETTLEMENT OF SHARIA ECONOMIC DISPUTES

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ABSTRACT

This study aims to determine the process of sharia economic mediation, the role of judges as mediators and factors that affect the failure of mediation of Islamic economic case in the Religious Court of Surakarta. This research is field research. The data was collected by interviewing mediator judges at the Religious Court of Surakarta and documentation. Using qualitative descriptive analysis technique. The results of this study is the judge mediator in carrying out mediation has been done as much as possible and help the parties formulate the intersection in solving the problem. Factors affecting the failure of mediation are: the parties do not understand the sharia economic contract, the absence of the parties, the absence of agreement and lack of mediator skills.

Key words: Mediator, Surakarta, Mediation

INTRODUCTION

The development of the Islamic economy today continues to increase every year, according to the Financial Services Authority (OJK) in 2015 the Islamic banking industry has total assets of 296 trillion with a market share of 4.96%. These assets are spread across 12 Sharia Commercial Banks (BUS), 12 Sharia Business Units (UUS) and 163 Sharia Rural Banks (BPRS). Along with the development of Islamic banking, sometimes it also creates disputes between customers and banks, banking with banks or banks with other institutions. In making contact with each other or in society, interests can conflict with each other, causing disputes so that it is hoped that humans can maintain behavior that creates order in living together. If not maintained, it will cause conflict or dispute. A dispute can happen to anyone. Disputes can occur between individuals and individuals, between individuals and groups, between groups and groups, companies and companies and others. A dispute is a situation in which a party feels aggrieved by another party.

The party who feels aggrieved communicates this dissatisfaction to the second party and if the second party does not respond to and satisfies the first party, and shows differences of opinion, then what is called a dispute occurs. When a dispute arises and cannot be resolved by deliberation between the parties, the parties seek justice through a judicial institution that is tasked with receiving, examining, hearing and deciding the cases of the parties. With the hope that they can resolve disputes fairly according to applicable law. In the litigation process, the implementation of the peace offer from the judge to the disputing parties is always carried out in each trial, but the parties ignore it and still want to continue the trial. Then the role of judges, which used to be passive, is changed to become active. The judge also acts as a mediator for the parties' peace efforts.

In PERMA No. 1 of 2016 concerning Mediation Procedures in Courts emphasizes the obligation for case examining judges to order parties to go through mediation which will be guided by the mediator. If the examining judge does not require the parties to go through mediation, then if a remedy is filed, then the appeal level or the Supreme Court with an interlocutory decision may order the court of first instance to conduct a mediation process. A mediator is a neutral party who assists the parties in the negotiation process in seeking various possible dispute resolutions without using a way to decide or force a settlement. The existence of a mediator is very important because in dispute resolution efforts, it is necessary to have a third party who can guide and direct the parties towards a settlement that satisfies the parties.

A mediation result of a peace decision has executorial power as a result of a trial / litigation process. If an agreement has been reached between the parties, the judge affirms the decision in accordance with the contents of the peace agreement with the dictum (amar), namely: "Punishing the parties to obey and implement the contents of the peace agreement". The next verdict was "to punish the parties to pay the cost of the case by being borne by each party equally". If the mediation in the court of first instance goes well, this can reduce the accumulation of cases at the appeal or cassation level. Because automatically the number of cases through the appeal or cassation level will decrease. In Article 2 paragraph (1) PERMA No. 1 of 2016, namely: "The provisions regarding the mediation procedure in this Supreme Court regulation apply in court proceedings in both the general court and the religious court".

The connection with the case of sharia economic disputes under the authority of the religious court is strengthened by the existence of Law no. 3 of 2006 as an amendment to Law no. 7 of 1989 concerning Religious Courts. UU no. 3 of 2006 provided a very significant change, especially regarding the absolute authority of the Religious Courts. Previously, the Religious Courts based on Law no. 7 of 1989 only has the authority to resolve disputes over marriage, inheritance, wills, grants, zakat, donations and alms. With the birth of Law no. 3 of 2006, the Religious Courts have been expanded with powers in the Sharia economy. This is reinforced by the existence of the Constitutional Court Decision No.93 / PUU-X / 2012. In its Decision Letter, partially granted the Petitioner's petition, stating that the Elucidation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Islamic Banking. Article 55 paragraph (2) in its explanation is spelled out as follows: "What is meant by" dispute settlement is carried out in accordance with the contents of the Akad "are the following efforts: a. discussion; b. banking mediation; c. through a court within the General Court".

This is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force. In other words, the Elucidation of Article 55 paragraph (2) has been deleted and is no longer valid. Because it can create legal uncertainty and losses for customers and sharia business units. In addition to legal uncertainty and causing losses, Article 55 paragraph (2)

also creates overlapping authority to judge because there are two courts that are given the authority to resolve sharia banking disputes while the Religious Courts Law explicitly states that religious courts have the authority to resolve disputes. Islamic banking including Islamic economics.

With absolute authority the Surakarta Religious Court can examine sharia economic cases. There are 13 cases of sharia economics in the Surakarta Religious Court during 2015-2017. Of the 13 cases of sharia economic cases in the Surakarta Religious Court, they have gone through the mediation process but none of them have been successful. The mediation process at the Surakarta Religious Court from 2015 to early February refers to PERMA No. 1 of 2008. After the issuance of a new PERMA, it refers to PERMA No. 1 of 2016 concerning Mediation Procedures in Courts. The mediation stages are pre-mediation, the mediation process and the final stage of the mediation process. Mediation that results in an agreement will be stated in the form of a peace deed or the plaintiff withdraws the case. The peace deed has permanent legal force as a judge's decision is different and cannot be appealed.

RESEARCH METHOD

This research is a qualitative research type of field research (field research), which aims to study intensively the background of the current situation and the environmental interactions of a social unit as it is, individuals, groups, institutions or communities. In this case the authors obtain data by direct interviews and documents related to the problem under study. In this study, the data collection techniques carried out by the author were interviews, documentation and observation. In this study, the analysis technique used is descriptive qualitative analysis, namely that the researcher wishes to provide an overview or explanation of the subject, namely the mediator judge and the object, namely the case of Islamic economics as the results of the research conducted by the author.

RESULTS AND DISCUSSION

1. Judges' Efforts as Mediators in Sharia Economic Cases at the Surakarta Religious Court 2015-2017

The mediator judge has a very important role because it can bridge the parties in negotiating a problem and finding the best solution and the parties can be helped by the existence of a mediator because it can formulate a common ground for the problems experienced by the parties and the parties can know what their position is. in the contract. If the mediation is successful and it is strengthened in the peace deed or the decision is revoked, then the vision of the Supreme Court can be realized, namely a simple, fast and low-cost process. The mediating judge at the Surakarta Religious Court has made every effort possible in carrying out his duties and roles as a mediator because the mediating judge hopes that every case can be resolved in a peaceful manner because peace is the best way out of a problem.

The mediator judge tries to build the trust of the parties by means that the mediator judge must know the problems faced by the parties, if the mediating judge has a good understanding of sharia economics, namely by having to know the sharia economic contract, its arguments and other legal bases, the parties' trust will be established. strongly. When the debtor occurs in default in the form of arrears in installments, the mediator judge links the obligation to pay the debt with the existing syar'i arguments. The attitude of empathy is as if the mediating judge shares what is experienced by the disputing parties. In relation to the case of sharia economics, where there are economic values and interests of each party, the mediator judge must balance the parties, namely not taking sides with one of the parties and as if the mediator judge also feels it. When the mediator can show empathy, there is a balance in conducting mediation and the mediator can put his position on a neutral side.

The mediating judge is neutral and must not judge or blame one or the parties to the dispute. Because the mediator is in charge of finding the best common ground or solution to resolve the case in a friendly manner. In the case of sharia economics where the debtor filed a lawsuit at the Surakarta Religious Court because the creditor would sell the collateral in the contents of the contract even though the clause had already been explained if the creditor was late in installments from a predetermined time and had been given a time leeway, the collateral object would be auction. So the mediator's duty is not to judge or to blame the debtor for not understanding the intent of the contract, but the mediator judge explains the intent and consequences of the contract.

In the case of sharia economic cases at the Surakarta Religious Court, the mediator judge carries out his role in accordance with the prevailing laws and regulations. The mediator plays a role in encouraging the parties to actively express opinions and proposals for peace. This is in accordance with Article 14 letter j PERMA No. 1 of 2016 that: "Facilitating and encouraging the parties to: a. explore and explore the interests of the parties, b. looking for various settlement options that are best for the parties; and c. work together to reach a settlement. If the parties play an active role, the mediator's task will be lighter and jointly find the best solution to solve the problem. In the case of sharia economics, the mediator has tried in accordance with Article 14 letter j PERMA and when the plaintiff does not know the meaning of the sharia economic contract contained in the contents of the agreement the mediator judge explains the contract first. Before the mediator suggests a win-win solution, the parties are given the opportunity to propose a solution to the problem. Due to Islamic economic problems, there are advantages and disadvantages or problems related to economic value. If the parties do not reach an agreement on each proposal, then the judge will offer to the parties and the mediator must not force the parties' will to the suggestions made by the mediator because the mediator's duties are as mediator and as a neutral party. Just help the parties to find the best solution.

Everything that contains economic value must have advantages and disadvantages. As in the case of the sharia economic case in the Surakarta Religious Court, in the contents of the agreement there is an element of debt and receivables that must run to collateral and installments. Default can be done by a creditor or debtor, if the debtor is in arrears in installments from the specified time limit, while the creditor sells the object of collateral even though the debtor is not late in installments. If the debtor wants the collateral in the form of land / house not to be auctioned because if the price is auctioned off, the price is below the standard price. Meanwhile, the bank wants the collateral to be auctioned immediately because if the collateral is sold and the proceeds from the sale are more than the loan made by the customer, the rest will be returned, but if the collateral has been sold and the proceeds from the sale have not covered the debt, then the customer still has arrears of the remaining installments.

The mediator is very careful when conducting the bargaining process, because it is related to the economic value so that the parties are not harmed and there is a balance between the parties by making an offer to the creditor to postpone the sale of the auction object and offer it to the customer with a certain period of time to pay it off. debts or cancel the auction conducted by the creditor because the debtor has not been late in installments. Especially regarding the balance of positions of the disputing parties, it must be read well by the mediator. Because from the balance of positions, it can then be directed to the right type of settlement in accordance with the needs of the dispute and the balance position of the parties. By knowing the positions of the parties, the mediator can map the needs and priorities of each party.

Before the mediation was carried out, the mediator made preparations in advance by studying the problems experienced by the parties, because the first Islamic economic case in the Surakarta Religious Court was in 2015 and was a new case. So the mediating judge must know about the sharia economy which includes: the contents of the agreement, the position of the parties as debtors and creditors, and the legal basis of the matter. The mediator made every effort possible before and during the mediation. The mediating judge makes minutes of the meeting so that in each mediation process it becomes focused on the problems experienced by the parties and their stages so that the parties can be encouraged to express their opinions and formulate common ground for the case. The caucus is a mediator holding a meeting with one party without cleansing the other. The caucus is also carried out by a mediator in mediating sharia economic cases, because with the presence of a caucus the mediator can dig deeper into the desire, seriousness and direction of the problem in the future to the parties in turn. This is in accordance with Article 14 letter e PERMA, namely: "it explains that the mediator can hold a meeting with one party without the presence of the other party (caucus)".

2. Factors Affecting the Unsuccessful Mediation of Sharia Economic Cases at the Surakarta Religious Court 2015-2017

The sharia economic case in the Surakarta Religious Court, which in the silverware contains economic value and guarantees in the form of land and / or residential land since the beginning of the dispute, the parties have been strong in defending their respective interests. Even in the character of this kind of dispute, sometimes from the start, the parties have refused to mediate and insist on continuing to trial before the examining judge. Mediation involves at least two parties; it can also be more than or two parties. The more parties involved in a dispute, usually the difficulty level of dispute resolution through the mediation process is also higher. In civil cases related to land disputes, especially when it concerns land that is a residence (on the disputed land there is a house or residence), the emotional level of the parties is very high. Because the demands of one party could mean that the other party leaves the house, they live in. The following are the factors that influence the unsuccessful mediation process of sharia economic cases at the Surakarta Religious Court:

1) The Parties Do Not Understand the Sharia Economic Contract

When the mediating judge carries out the mediation process, either the customer does not understand the sharia economic contract. Meanwhile, the banks themselves sometimes represent legal representatives who do not understand sharia economic contracts as well. This makes the explanation of the problems experienced by the parties incomplete so that the mediator judge first understands the parties regarding the explanation of the sharia economic contract agreed between the customer and the bank, the legal basis and the consequences of the contract. The creditor should ask the purpose and legal consequences of what has been agreed with the debtor using the existing contract in sharia economics. For debtors before entering into an agreement, the debtor should explain the contents and purpose of the sharia contract which is the agreement of the parties and during the mediation process the debtor should represent employees who know about sharia economics.

2) The presence of the parties

The presence of the parties greatly influences the running of the mediation, with the presence of the parties it can indicate that both parties have good intentions to conduct mediation. If one of the parties is not present in the mediation then the mediation cannot be carried out and can interfere with the mediation. Mediation will fail if one party delays the mediation continuously and indicates that one or both parties have bad intentions. The mediating judge will assess the seriousness of the parties if the parties are present and really want to resolve the problem amicably through mediation, usually mediation will occur repeatedly as long as the 30-day time limit has not ended and can be extended again for 30 days. Because mediation can be carried out if both parties are present unless the mediating judge conducts a caucus (holds a meeting with only one of the parties). because the agreement between the parties to be reconciled or not to reconcile is the right of the parties, and the mediator does not have the authority to force the parties to reconcile.

3) There is no agreement between the parties

The contents of the contract or agreement made by the parties are very important to know if there is a default or illegal act between the parties. When the mediating judge has explained the position of the parties, the purpose and consequences of the contract, the mediator judge returns to the original position of the contract and makes bargains by reading the balance of the parties because the mediator judge must not impose the will of the parties, his task is only to bridge the parties so that an economic case Sharia can be resolved in a familial way and does not cause harm between the parties. The mediating judge has made every effort to reconcile the parties but the mediating judge returns to the parties whether there is agreement or not. The debtor wants to maintain the collateral object and the creditor wants the collateral object to be auctioned off. So, the parties do not have the same interest so that the case is resolved quickly and at low cost through

4) Lack of mediator skills

The mediator's skills in mediating in sharia economic cases are very important, because the more the mediator has qualified skills in sharia economics, the mediator can encourage parties to resolve sharia economic cases through peace by means of mediation. The mediator judges at the Surakarta Religious Court have just attended training in sharia economics, who have not been certified, only following training in sharia economics and there are no judges who are certified in sharia economics. Meanwhile, mediation training conducted by mediator judges is limited to general mediation training and no one has attended Sharia economic mediation training. The absence of a mediator who conducts sharia economic mediation

training makes mediators lack skills in conducting mediation. In addition, of course, the mediator judge's understanding of sharia economics, psychology and formulating strategies in mediation are also very important in carrying out mediation.

CONCLUSION

Based on the discussion that has been stated in the previous chapters, the following conclusions are drawn, first, in general the implementation of mediation at the Surakarta Religious Court is in accordance with PERMA No. 1 of 2008 for cases of sharia economics in 2015-February 2016 and PERMA No. 1 of 2016 for cases of sharia economics February 2016- present which include: the pre-mediation stage, the mediation stage and the final stage of mediation. Second, the efforts of judges in mediating sharia economic cases have been made as much as possible and seek common ground for the parties by holding caucuses, explaining the position of each party and trying to make bargains. Third, the factors that led to the unsuccessful mediation of sharia economic cases at the Surakarta Religious Court, namely: the parties did not understand the sharia economic contract, one party was not present in the mediation, there was no agreement between the parties and the absence of a mediator who conducted sharia economic mediation training create a lack of mediator skills in mediation.

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